

ATTACHMENT C

QUALITATIVE FINDINGS (FIVE STAGES OF THE COMPLAINT PROCESS)

Stage 1: Intake

General Observations: Overall, during the discussions, the Administration and IPA expressed few concerns with the intake stage of the Process. Additionally, IA Unit staff expressed that they think that the revised intake forms (developed by the IA Unit with IPA input) are working well to inform complainants about the Process' procedures and stages.

Below is discussion on specific areas during Intake stage that were reviewed and evaluated by staff.

Citizen Interviews: The IA Unit audio records all intake interviews with permission from the person filing the case; however, a person has the option to decline.

Area for Refinement: The IA Unit and IPA need to continue discussion on whether to enhance the audio record of complainant contacts and to better understand the balance between a complainant's options, customer service, and transparency.

Case Summaries: The IPA requested that more detail be included in case summaries, IA Unit staff directed intake officers to be more specific and detailed in their summaries. The quality of the case summaries has improved.

Stage 2: Classification

General Observations: The evaluation determined that the Citizen Complaint Process has been simplified and streamlined through the reduction in the number of classifications and allegations.

Stage 3: Investigation

General Observations: The Administration and IPA report that investigations generally now include more complete supporting documentation. This results in the IPA being able to complete review and audit more quickly. It was noted that there has been an improvement of documents linked to the IA-Pro database, which results in a more timely process and higher quality data available for review.

Below is discussion on specific areas in the Investigation stage reviewed/evaluated by staff.

Officer Interviews: The IPA requested earlier notice of whether or not a police officer may be interviewed as part of the investigation and that officer interviews be conducted in a timely manner. The IPA noted that this would assist with determining both the scope of an investigation and the possibility of an IPA appeal. The Administration discussed the investigation process with both the IA Unit and Office of Employee Relations. The discussion was preliminary. A better understanding of the scoping of an investigation is needed in order to determine whether timelier police officer interviews can be conducted and any potential impact on the IA Unit workload.

Discussions will continue with particular focus on police officer interviews in the absence of sufficient factual evidence.

Below is discussion on specific areas in the Investigation stage reviewed/evaluated by staff.

Allegation Identification: As part of the investigation process, the IA Unit assigns allegations to complaints. The IPA raised concerns about the identification of allegations and the elimination of allegations during the course of the IA Unit's investigation, which make it difficult for the IPA to track during an audit.

During the preliminary investigation stage, IA Unit staff reviews all concerns expressed by an individual and identifies allegations, which are fully investigated, where a member may have violated Department or City policy, procedure, rules, regulations or the law; concerns that do not rise to the level of an allegation are addressed within the write up of the investigation. The IPA may appeal allegation assignment similar to the process utilized for appealing the complaint investigations. This process will be formalized in a memorandum from the City Manager to the IPA.

Areas for Refinement: The Administration would like to better understand the implications of tracking the allegations and documenting the final disposition in a manner that is desired by the IPA. More discussion is needed regarding this concern.

Force:³ With the revised Process, the 2-tiered definition was eliminated because the Force allegation classification was subjectively assigned by the description of force provided by the complainant, in the absence of medical evaluation and documentation. The IPA raised concerns with the elimination of the two-tier Force classification explaining that it is difficult for IPA staff to determine the type or level of force alleged in each case unless a full audit review is conducted. To respond to the IPA's concerns, the IA Unit will include a higher level of detail of the use of force case summaries, allowing the IPA to better determine the severity of Force.

Courtesy Allegation: The City Manager directed the Police Department to evaluate and revise the Courtesy definition. The preliminary definition for the Courtesy allegation focuses on conduct, language, and professionalism with respect to carrying out law enforcement duties. The preliminary definition is an affirmative obligation to Courtesy. The preliminary definition is as follows:

Courtesy: Department members will be professional in the course of their duties. Profane or derogatory language or obscene gestures will not be used during a contact with a member of the public. The Department recognizes that there are limited field situations where profane or derogatory language or obscene gestures may be a reasonable tactic or tool (e.g., undercover work, imminent risk, volatile physical and deadly force encounters, control tactic, etc.).

For the limited field situations where profane or derogatory language or obscene gestures may be a reasonable tactic or tool, the IA Unit Guidelines and Duty Manual will be revised to identify these limited situations for consideration when investigating cases alleging Courtesy violations.

³ Under the former Process, Force allegations were broken down into two categories: Force I, serious bodily injury that requires medical care; and, Force II, injury that does not require medical care. The initial purpose for this distinction was to ensure that the most serious complaints received timely investigation (within 180 days).

Bias-Based Policing: The City Manager's Office also requested a review of the Bias-Based Policing allegation to ensure that the definition was sufficient and to understand how it was working. In January 2008, the Administration accepted the IPA's definition for Bias Based Policing which is reflected below.

As background, Bias Based Policing is the allegation intended to capture actions by an officer involving a citizen that are improperly based on legally-protected classifications — including race and gender. Under the former process, an officer engaged in racial profiling only when race was the sole factor motivating his/her conduct. In the revised Process, the definition of bias-based policing is defined as *"an allegation that a Department members engaged in conduct based on a person's race, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identify, medical condition or disability."* In the revised Process, the definition of bias-based policing does not require race to be the sole motivating factor. Police Department staff have aligned the SJPD Duty Manual and IA Unit Guidelines to the Penal Code.

Areas for Refinement: Additional changes may be made after consideration of the research underway by the CPLE. Below are process improvements that will be implemented:

- Alter the definition of "Unfounded" to reflect that, for Bias Based Policing allegations only, the investigation and analysis revealed a reasonable, nondiscriminatory basis for the contact or officer action. Currently, "Unfounded" means that the investigation conclusively proved that the acts complained about did not occur. Because of proof problems in the analysis of Bias Based Policing, it is almost difficult to reach a "conclusively proved" threshold. However, if a reasonable, nondiscriminatory basis for the officer's actions is established, then it is reasonable to state that the evidence was not sufficient to prove that the officer was motivated only by bias.
- Keep and make findings on all Bias Based Policing allegations instead of changing unsubstantiated Bias Based Policing allegations to Courtesy allegations and rendering a finding on Courtesy.

Non-Misconduct Concern: The IPA has requested more timely notifications of when cases are going to be classified as Non Misconduct Concerns to allow IPA staff sufficient time to review the cases and/or raise any concerns.⁴ The IA Unit has created a process at the Pre-Classification stage for the IPA to be notified of any cases that might potentially be classified as Non Misconduct Concerns.

Additionally, the IA Unit expressed concern regarding the IPA classifying some cases into the Non Misconduct Concern category that based on the IA Unit assessment, required complaint classification and investigation. To address the IA Unit's concern, the IPA agreed to place cases in Pre-Classification category to allow for the final classification by the IA Unit.

Non-meritorious or Duplicative Concerns: Staff expressed concern about cases filed by complainants who repeatedly call about non-meritorious or duplicative concerns. Under the current system, a new case is opened every time an allegation is filed, regardless of the

⁴ Non Misconduct Concerns are concerns that do not rise to the level of complaint but are documented and tracked. A Non Misconduct Concern case cannot be closed until the supervisor has discussed the case with the subject officer.

volume of complaints filed. During the evaluation discussions, concerns surfaced about the impact these cases are having on staff resources and aggregate data. Last year, for example, one "repeat" complainant filed 18 cases.

Areas for Refinement: IA Unit and IPA staff are exploring mechanisms by which these cases can be reviewed and consolidated when warranted.

Stage 4: Closing Investigations

The Administration and IPA have concerns about complaints being closed in a timely fashion and the impact of shortened time for the appeal process to take place. Once the PD investigation has been completed and findings have been issued, a copy of the completed investigation is forwarded to the IPA for audit. If there are no issues raised by the IPA, the complaint is then closed. If issues are raised, the IPA may informally bring these concerns to the attention of the IA Lieutenant, appeal formally to the Chief of Police, and appeal for final determination to the City Manager—each phase requiring time to review and consider the formal appeal.

Areas for Refinement: In the coming year, the Administration, IA Unit and IPA will work on creating agreements that addresses the time needed to uphold each phase of the Process.

Stage 5: Audit General Performance

IPA and IA Unit staff have observed that generally speaking, IPA investigation audits are being completed quicker. Once an investigation has been completed, ideally within 300 days, the IPA completes its audit within two weeks.